IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22110 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KRISHNA SEVA TRUST - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner(s) : 1,MR SURESH M SHAH for Petitioner(s) : 1,
MR LB DABHI, AGP for Respondent(s) : 1, 4,
NOTICE SERVED for Respondent(s) : 1 - 2.
MR CB UPADHYAYA for Respondent(s) : 3, 3.2.1, 3.2.2, 3.2.3,3.2.4

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 20/07/2006

ORAL JUDGMENT

1. **Rule**. Mr. Dabhi, learned AGP waives notice of rule for respondent Nos. 1 & 2 and Mr. Upadyay,

learned counsel waives notice of rule for respondent Nos. 3, 3/1, 3/2, 3/3 & 3/4.

2. The petitioner has preferred the petition for challenging the order passed by the State Government whereby the revision is dismissed and the order of the Collector is confirmed.

3. Heard Mr. Shah, learned counsel appearing for the petitioner, Mr. Upadhyay for respondent Nos. 3, 3/1, 3/2, 3/3 & ¾ and Mr. Dabhi, learned AGP for respondent Nos. 1 & 2. With consent of both the sides, the matter is finally heard.

4. The contention raised on behalf of the petitioner is that the application of the petitioner is rejected on the ground that the Trust of the petitioner is subsequently registered as against the trust of respondent No. 3 and therefore, it has been submitted by Mr. Shah that the State Government ought to have considered the matter of both the trusts instead of rejecting the application of revision. He also submitted that as per the order passed by the State Government in the revision proceedings preferred by the respondent No. 3 trust, the matter is remanded to the District Collector for examining the case as per the Government circular and therefore, he submitted that the State Government ought to have directed the Collector to decide the application of the

petitioner also simultaneously. Mr. Shah, also submitted that the encroachment would be by only one party and it cannot be by two claimants. Therefore, it is the contention of the petitioner that the petitioner is in possession by way of encroachment over the land in question and by not considering the said aspects, the revision is rejected merely on the ground that there is earlier registration of the respondent No. 3 trust and therefore, this Court may set aside the order.

5. Mr. Dabhi, learned AGP has supported the order passed by the State Government whereas, Mr. Upadhyay, learned counsel appearing for respondent No. 3 and its trustees contended that earlier, when the order dated 15.07.2005 was passed, the petitioner Trust was heard by the State Government and thereafter, the agreement is arrived at between Shri Tapanandji Bramhachari who was representing throughout in the proceedings before the lower authority on behalf of the petitioner Trust and it was agreed that the said Trust who is petitioner herein will not have any objection if the land is alloted to the respondent No. 3 Trust and therefore he submitted that this Court may not interfere with the order passed by the State Government.

6. Having considered the above, it appears that as

per the order dated 15.07.2005 passed by the State Government, copy whereof is produced at page 46, in the revision preferred by the respondent No. 3 trust, the State Government directed for remand and there is no dispute on the said aspects and in the said order it was observed that prima facie, the petitioner therein who is respondent No. 3 herein appears to be in possession of the property. So far as the petitioner herein who was 3rd party in the said proceedings is concerned, the application was not entertained and it is observed by the State Government that separate order shall be passed in the revision preferred by the 3rd party therein, who is petitioner herein. It also appears that the order which is impugned in this petition is passed on 18.07.2005, whereas, the order in revision preferred by respondent No. 3 was passed on 15.07.2005.

7. Considering the facts and circumstances that the subject matter of the proceedings of revision was the same land, it was required for the State Government to consider the matter simultaneously. However, the same has not happened and consequently, it has resulted into different order of the State Government. As the order dated 15.07.2005 is not under challenge nor is the subject matter of this petition, this Court is not required to examine the legality and validity of the said order dated 15.07.2005

passed by the State Government for remanding the case to the District Collector. However, the ground as observed in the impugned order of rejecting the application on the ground that the trust is subsequently registered, cannot be said as valid in the eye of law. It is all possible that a claim or application may be made by a Trust or body which is subsequently registered and if in a given case, the demand is not justified on merits and is rejected by the District Collector or by the State Government, it may stand on different footing. But, keeping the person outside the zone of consideration merely on the ground that the Trust is subsequently registered does not appear to be proper.

8. However, it appears that even in the application of respondent No. 3 Trust, the matter is remanded to the District Collector for decision and therefore, when the whole issue on the question of entitlement of the land or otherwise is to be examined by the District Collector, the application of the petitioner can also be considered simultaneously. It deserves to be recorded that as per the case of respondent No. 3, Shri Tapanandji Bramhachari was formerly doing Seva Puja and the petitioner Trust initially came to be formed by him. It is also the case of the respondent No. 3 that actually, physical possession of the land in question is

of the respondent No. 3 and not of the petitioner, whereas, the claim of the petitioner is that the actual physical possession is of the petitioner.

9. In my view, it may not be required for this Court to examine the said aspects and conclude on such rival claims, since in any case, it will be required for the District Collector to examine the same while considering the application of both the sides.

10. It may also be recorded that the revision was preferred by the petitioner against the order dated 22.03.2003 passed by the District Collector and the perusal of the order passed by the District Collector dated 22.03.2003 shows that at the relevant point of time, since the revision was pending, which was preferred by respondent No. 3 before the State Government, the application was filed and therefore, when the revision of the respondent No. 3 Trust is finally decided by the State Government, the application can be considered in accordance with law and the said aspect also is not properly considered by the State Government.

11. In view of the above, the impugned order passed by the State Government is quashed and set aside with the direction that the application of the petitioner shall also be considered by the

District Collector in accordance with law while deciding the application of respondent No. 3 for regularisation/allotment of the land. It is made clear that by the aforesaid direction, no additional right shall stand vested in favour of the petitioner for getting the land or otherwise and the District Collector shall examine the application of the respondent No. 3 as well as of the petitioner in accordance with law.

12. The petition is partly allowed to the aforesaid extent. Rule partly made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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